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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,645	03/20/2001	William Robert Collett	KK-140-R &D	1141

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EXAMINER
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WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 12/10/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/812,645

Applicant(s)

COLLETT ET AL.

Examiner

Dionne A. Walls

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 26-30, 32-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al (US. Pat. No. 2,764,984) in view of Applicant's Admitted Prior Art.

Cohen et al discloses a parallelepipedal (corresponding to the claimed "box") cigarette package having a cigarette snuffer (corresponding to the claimed "cigarette saver") mounted therein, said package being comprised of a paper body portion 14 designed to hold a plurality of cigarettes. As evident from Figs. 2 and 3, the cigarette snuffer has a first end portion which includes a round opening which leads to a channel that terminates in the cigarette snuffer at a tapered end. The snuffer comprises a metal foil interior (corresponding to the claimed "cigarette saver is constructed from metal")(see cols. 1-2). While Cohen et al indicates that the body of the package is paper, there is no clear articulation that this material is paperboard, or that it is crushproof. However, Applicant admits, in the instant specification, on page 1, lines 10-13, that one type of popular cigarette package is the "crush proof box" – which is manufactured from resilient paperboard. It would have been obvious to one having ordinary skill in the art at the time of the invention to fabricate the cigarette package of

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Cohen et al of crush-proof paperboard since cigarette packages constructed with paperboard material (and designed to be crush-resistant), are well-known in the art, as admitted by Applicant. Further, while the paperboard, crushproof cigarette package of Cohn et al modified by Applicant's Admitted Art may not specifically disclose that it is designed to hold twenty-five cigarettes, Applicant admits, in the instant specification, on page 10, lines 14-15, that typical crush-proof boxes are designed to include about twenty or twenty-five cigarettes. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the crush-proof box of Cohen et al such that it could hold twenty-five cigarettes since it is conventional in the cigarette art to design cigarette packages to accommodate this number of cigarettes. Also, it follows that if the cigarette package of Cohen et al modified by Applicant's Admitted Art is designed to hold twenty-five cigarettes, it would also, obviously, be designed to hold twenty-three cigarettes (claim 34).

Lastly, while there may be no clear articulation from Cohen et al that the number of cigarettes contained in the cigarette package is twenty, Cohen does state that only a few cigarettes are needed to be removed in order to utilize the snuffer. It would have been obvious to one having ordinary skill in the art at the time of the invention to remove from 3-5 cigarettes from the package of Cohen in order to allow sufficient room to expand the snuffer to its frustoconical shape to receive a cigarette to be extinguished - as seen in Fig. 2.

Regarding claims 27 and 35, while Cohen et al modified by Applicant's Admitted Art may not specifically state that the opening to the cigarette extinguisher is elliptical for

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receiving cigarettes into the channel, it would have been obvious to one having ordinary skill in the art at the time of the invention to fashion the opening in an elliptical shape in order to flatten/elongate the snuffer, while still providing enough of a diameter width to receive a cigarette, so that fewer cigarettes would have to be removed from the package when the snuffer is expanded/in use.

Regarding claims 29 and 37, the width of the opening is obviously greater than the diameter of one of the cigarettes in order to allow the cigarette to be received into the cigarette snuffer for extinguishment.

Regarding claim 30, since the snuffer of Cohen et al modified by Applicant's Admitted Art is designed to snuff cigarettes, the channel of said snuffer obviously includes an extinguishing portion, and it follows that said portion would be at the bottom of the snuffer where the frustoconical shape narrows, thus reducing the amount of oxygen available to the burnt end of the cigarette, resulting in extinguishment of same. While the channel of the cigarette snuffer of Cohen et al modified by Applicant's Admitted Art may not specifically state that this channel also comprises a guide portion, it seems apparent, from Figure 2, that this feature is provided by the sloping, tapering walls – which would obviously serve to guide the cigarette portion to the bottom of the snuffer, where it is ultimately snuffed.

3. Claims 26, 28-34, and 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert et al (US. Pat. No. 4,886,076), further in view of Applicant's Admitted Prior Art.

Gilbert discloses a cigarette snuffer, which can be fabricated from plastic or metal, and incorporated in a cigarette package (see col. 1, lines 53-57). As evident from the figures, the cigarette snuffer has a first end portion which includes a round opening which leads to a channel that terminates in the cigarette snuffer at a tapered end. While Gilbert may not articulate that the cigarette package inside which the snuffer can be positioned is a paperboard, crush-proof box designed to hold twenty-five or twenty-three cigarettes and actually holding twenty cigarettes, Applicant admits, in the instant specification, on page 1, lines 10-13, that one type of popular cigarette package is the "crush proof box" – which is manufactured from resilient paperboard. It would have been obvious to one having ordinary skill in the art at the time of the invention to fabricate a cigarette package, in which to place the snuffer of Gilbert et al, of crush-proof paperboard since cigarette packages constructed with paperboard material (and designed to be crush-resistant), are well-known in the art, as admitted by Applicant. Further, while the paperboard, crushproof cigarette package of Gilbert et al modified by Applicant's Admitted Art may not specifically disclose that it is designed to hold twenty-five cigarettes, Applicant admits, in the instant specification, on page 10, lines 14-15, that typical crush-proof boxes are designed to include about twenty or twenty-five cigarettes. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the crush-proof box of Gilbert et al such that it could hold twenty-five cigarettes since it is conventional in the cigarette art to design cigarette packages to accommodate this number of cigarettes. Also, it follows that if the cigarette package of Gilbert et al modified by Applicant's Admitted Art is designed to

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hold twenty-five cigarettes, it would also, obviously, be designed to hold twenty-three cigarettes (claim 34).

Lastly, while there may be no clear articulation from Gilbert et al modified by Applicant's Admitted Art that the number of cigarettes contained in the cigarette package is twenty, it would have been obvious to one having ordinary skill in the art at the time of the invention to remove from 3-5 cigarettes from the cigarette package of Gilbert et al in order to allow sufficient room for the snuffer to be placed therein.

Regarding claims 29 and 37, the width of the opening is greater than the diameter of one of the cigarettes in order to allow the cigarette to be received into the cigarette snuffer for extinguishment (see col. 2, lines 29-32).

Regarding claim 30, the snuffer of Gilbert et al modified by Applicant's Admitted Art includes an extinguishing portion 30, and a flange 16 serving as a guide portion.

### ***Response to Arguments***

Applicant's arguments, filed on September 24th, 2002, have been considered but are moot in view of the new grounds for rejection.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- JP 11-113553.

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5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (703) 305-0933. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.



Dionne A. Walls  
December 4, 2002

  
STEVEN P. GRIFFIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700